



APPENDIX.

Supplemental Statement of Facts.

The petitioner has included within his petition a Statement, which while setting out many of the powers and authorities of the Port of New York Authority, also omits some which the respondent believes are pertinent to the questions now presented to this Court, and it, therefore, submits the following facts with regard to the Authority, all of which were stipulated in the proceedings before the Tax Court.

The Port Compact was evolved after a series of individual efforts by the States of New York and New Jersey and was preceded by full legislative investigations and reports. (Stip. 10.)¹ These called for the creation of a port authority to solve a port problem which was characterized as a great sociological problem of chief concern to the public at large, throwing a heavy burden on the commerce of the port, adding to the cost of living, and curtailing the port's utility in time of war. (Stip. 20.) The Authority's vehicular crossings have been recognized by statute to be "for the benefit of the people of the States of New York and New Jersey, for the increase of their commerce and property and for the improvement of their health and living conditions; and the Port Authority shall be regarded as performing an essential governmental function * * *." (Stip. 3.) It is the joint agency of the two States (Stip. 1) having no stock and no stockholders, but being wholly owned by the States. (Stip. 107.) Its commissioners which constitute its governing body are appointed by the

¹ This reference and those which follow are to paragraphs taken from the Stipulation of Facts entered into between the parties before the Tax Court which now appears, in I R. A., pages 36 to 89.

Governors of the respective States, by and with the consent of their senates, and they are removable only by the Governor, in the case of New York, and by the State Senate, in the case of New Jersey. (Stip. 25, 109.) Revenues, as well as all other funds, can only be expended in accordance with the specific statutes of the two States and any surplus is held subject to State direction. (Stip. 105.) All its bonds have been issued and projects undertaken pursuant to specific statutory authorization and direction. (Stip. 43, 50, 57, 72, 82, 85, 105.) Under the Comprehensive Plan, legislation of both States vested the Authority "with all the necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State, to effectuate the same, excepting power to levy taxes or assessments." (Stip. 32.) The State of New York enacted legislation giving the Port Authority jurisdiction over all New York residents, corporations and property owners for the purpose of Port Authority investigations or hearings. Such legislation further provided that the Port Authority should have the power to issue orders requiring obedience by such persons, enforceable by mandamus or injunction, and to subpoena such persons with a provision for contempt in the event of failure to comply. Such investigations and hearings have been held, and such subpoenas have been issued and honored. (Stip. 115.) The Port Authority is immune from suit whether for contract or tort. This immunity has been upheld in the New York, New Jersey and Federal Courts. (Stip. 113.)

EXHIBIT 1.

TREASURY DEPARTMENT
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The Bureau of Internal Revenue tonight began a test action intended ultimately to prove in the courts that the Federal Government has the right under the Constitution to tax the income from State and municipal securities.

Its first step was to send notices of deficiency to seven bondholders of the Port of New York Authority who had not included interest from their bonds in their tax returns filed on March 15, 1938.

The Internal Revenue Code provides that the Federal Government may not tax the interest on the securities of States, territories or "political subdivisions." It is the Treasury's contention that public corporations like the Port of New York Authority are neither states nor territories nor "political subdivisions", and that therefore the interest from their securities is not exempt from Federal income tax under the law.

If the courts agree with the Treasury on this point, they will be faced squarely with the broader constitutional question of the immunity of State and municipal securities from Federal taxation, Treasury attorneys said.

The present action represents no change in the Administration's policy of seeking to tax only the *future* issues of State and municipal securities. Secretary Morgenthau has consistently voiced opposition to proposals which would subject the interest on outstanding State and municipal securities to Federal taxes. Treasury officials feel, however, that the silence of Congress on the income tax status of obligations of the Port of New York Authority and similar public corporations has left the Department no alternative but to proceed in the present case.

To avoid putting a large class of taxpayers to unnecessary expense, the Bureau of Internal Revenue will proceed only against a few Port of New York Authority bondholders. Those to whom deficiency notices were sent tonight are Howard S. Cullman, vice-chairman of the Authority; Alexander J. Shamberg, a commissioner of the Authority; Dennistoun M. Bell, Maurice Bouvier, Henrietta J. Bouvier, Willis S. Kilmer and Martin S. Paine. It is assumed that the Port Authority will undertake the legal defense of these bondholders, especially since it defended Port Authority employees in previous tax litigation with the Federal Government.

The history of the present action goes back to the Supreme Court's decision in the Port of New York Authority salary case (*Helvering v. Gerhardt*, 1938, 304 U. S. 405; rehearing denied, 1938, 305 U. S. 669). The defendant in that case was an employe of the Port Authority. The court held that his salary from the Port Authority was taxable.

Shortly after this decision, Secretary Morgenthau called President Roosevelt's attention to the urgent need of legislation to remove the uncertainties created by the Supreme Court's final ruling. The Supreme Court purported to declare the law as it had always been, with the result that the Bureau of Internal Revenue had no choice but to apply the Court's decisions retroactively.

The Administration hoped that Congress would eliminate the hardships and inequalities which would flow from the retroactive application of the Port Authority case. On January 19, 1939, President Roosevelt transmitted to Congress a message recommending that Congress correct the situation. In that message, the President said:

"Unless the Congress passes some legislation dealing with this situation prior to March 15th, I am informed by the Secretary of the Treasury that he will be obliged to collect back taxes for at least 3 years upon the employes of many State agencies and upon the security holders of many State corporate instru-

mentalities, who mistakenly but in good faith believed they were tax exempt. The assessment and collection of these taxes will doubtlessly in many cases produce great hardship.

"Accordingly, I recommend legislation to correct the existing inequitable situation, and at the same time to make private income from all Government salaries hereafter earned and from all Government securities hereafter issued subject to the general income-tax laws of the Nation and of the several States. It is difficult for almost all citizens to understand why a constitutional provision permitting taxes on 'income from whatever source derived' does not mean 'from whatever source derived.' "

Congress partially followed this recommendation by abating back taxes on public employes through the enactment of the Public Salary Tax Act of 1939, but has not yet taken any action to relieve from tax liability the holders of outstanding securities of public corporations.

If the Supreme Court now upholds the Treasury's position, the Treasury will promptly renew its recommendation to Congress (1) to abate the payment of back taxes, (2) to exempt outstanding issues from taxation, and (3) to begin the taxation of future issues.

Assuming that Congress carries out these recommendations, no holders of Port Authority and similar obligations have any reason to fear the imposition of taxes on obligations now outstanding, Treasury attorneys said.